

January 12, 2007

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

**Request for Review**

**CC Docket No. 02-6**

**CC Docket No. 96-45**

The Sunnyside Unified School District 12 (“Sunnyside”), by its representative, requests that the Commission review a Schools and Libraries Division (“SLD”) decision denying E-Rate funding. This request for review relates specifically to five FRNs (5) of the seven (7) originally appealed to the SLD. They are as follows:

Billed Entity Applicant Name:	Sunnyside Unified School District 12
Funding Request Numbers:	1275262, 1275297, 1275333, 1275822, 1275866
Form 471 Application Number:	462726
Contact Name:	Dr. John Cox
Contact Phone Number:	520-545-2011
Contact Fax Number:	520-545-2128
Contact Email:	<a href="mailto:johnc@susd12.org">johnc@susd12.org</a>

Sunnyside was denied E-Rate funding for each of the above Funding Request Numbers (FRN’s) because Sunnyside “has not demonstrated that a signed contract was in place with service providers at the time the Form 471 application was filed” for Funding Year 2005-2006. Appeal letters for each of the denied FRNs were emailed to the SLD on July 05, 2006. A letter of denial issued by the SLD was received by Sunnyside on November 21, 2006.

The SLD acknowledged the dated contracts for the requested services for the FRN's were signed by all parties to the agreement, but since the individual signatures were not dated, the SLD denied the funding on the basis there was no indication as to what dates the agreements were signed. A copy of the SLD denial letter is attached as Attachment A.

### **FACTS**

In anticipation of filing a 2005 funding year request for E-Rate support, Sunnyside filed a Form 470 for both Priority One and Two services. Sunnyside waited for more than 28 days, and then began the process of evaluating bidders for the requested services. After the 28 day waiting period, Dr. John Cox, Sunnyside Assistant Superintendent and designated agent for filing the district's 2005-06 E-Rate application, conducted the bid evaluation process and began the process of bid awards. Attachment B contains a copy of the October 26, 2005 Governing Board action approving Dr. Cox as the Sunnyside agent with full authority for filing the 2005-2006 E-Rate application.

On February 8, 2005, the Sunnyside Governing Board considered the bid awards and approved the recommended contracts to be submitted for E-rate funding. A copy of the approved February 8, 2005 agenda item with the contract bid awards for 2005-2006 E-Rate Funding is included in Attachment C. Notation: Since the Governing Board action of February 8, 2005 approved more than the five (5) contracts being referenced in this FCC appeal, the contracts applicable to this FCC appeal are identified with the corresponding FRN referenced in this appeal.

Dr. Cox, as Sunnyside agent, prepared the appropriate Award Letter and Contract for each approved contract with the awarded vendor. The date of Sunnyside Governing Board contract award approval of February 8, 2005 was used as the date for the Award Letter and Contracts for the corresponding FRN's 1275262, 1275297, 1275333, 1275822, and 1275866.

After receiving Governing Board approval of contracts listed above, Dr. Cox proceeded to issue the Award Letter and Contract to each vendor for each of the eligible Priority Two services contracted by the Governing Board. Attachment D contains a copy of each award letter and contract issued with the referenced FRN indicated on each award. Dr. Cox signed each of the dated award letters and contracts on behalf of Sunnyside and each

awarded vendor signed award letter prior to the filing of the Form 471 on February 18, 2005. Attachment D further contains the notarized documents of all signature vendors that the signatures to the award letters and contracts were issued prior to the Sunnyside filing of the Form 471 on February 18, 2005 and where, therefore, valid, enforceable contracts.

Under the Contract Guidance section of the SLD entitled CONTRACTS, the SLD states: “Applicants must be able to demonstrate that they had a signed contract in place before or at the time they submitted their completed Form 471, section FCC 54.504c.” Attachment E contains the SLD Contract Guidance for Contracts in effect on 12/7/2005. To further support the fact Sunnyside had signed contracts with all service providers before signing and submitting a completed (certified) Form 471, Sunnyside contacted the law firm of DeConcini, McDonald, Yetwin, & Lacy in Tucson, Arizona to review the Procurement/Contract actions taken by “Sunnyside” prior to February 18, 2005 and to ascertain whether a valid and enforceable contract exists under applicable Arizona law when the invitation to bid, the vendor’s signed proposal and award letter are taken together .

In a letter from the DeConcini law firm dated June 16, 2005, Spencer A. Smith, attorney, issued the letter of opinion contained in Attachment F. This opinion referenced pre-May 2005 and post-May 2005 procurement and contract actions applicable under Arizona law. After considering the procurement and contract actions taken prior to the February 18, 2005 filing of the Form 471, (pre-May 2005), attorney Smith concluded in paragraph 5 on page 2 as follows: “Therefore, in reviewing the District’s pre-May 2005, procurements, so long as each invitation to bid or request for proposals contained relevant terms and conditions with respect to payment, quantity and materials, and so long as the bid or proposal submitted and signed by the vendor provided the missing pricing terms, the offer contained in the signed bid or proposal of the vendor, when accepted by the issuance of the award letter signed by the District, were adequate to form a contract between the parties.

## DISCUSSION

The SLD's decision not to fund Sunnyside's requests is clearly erroneous. As required, Sunnyside listed the services and products it wanted to procure on a Form 470 and posted that form to the SLD's web site. As required, Sunnyside waited more than 28 days for bids to come in; evaluated bids to determine the most cost-effective bidders; received Governing Board approval for the contracts awarded; issued contracts with the Governing Board approval date as the contract date accompanying the signature lines of both Sunnyside and its service providers; and acquired signatures to each contract, Dr. John Cox for Sunnyside and the respective representative for the vendor, prior to the Sunnyside filing of Form 471 on February 18, 2005.

The pertinent portion of 47 C.F.R. II 54.504(c) states that the eligible school, "shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator." Sunnyside did exactly that. Based on the documentary evidence submitted to the SLD, there is no basis for the conclusion by the SLD that, "you have not demonstrated that a signed contract was in place with your service provider at the time you submitted your Form 471 application". According to FCC rules the contract to be valid must be signed by both parties. All dated contracts submitted for the referenced FRN's were signed by both parties and approved by the Sunnyside Governing Board ensuring the contracts were in place prior to the submission of the Form 471. The Governing Board approval of February 8, 2005 for all the contracts was submitted to the SLD on Form 471. Accordingly, the contracts were signed and in effect prior to the submission to the SLD on February 18, 2005 as required by the FCC rule cited above.

The SLD's ruling cannot stand because, under 54.504 (c) of the Commission's rules, the Commission has held that a district with a legally binding agreement in place when it submits its FCC Form 471 is not in violation of 54.504 (c). *Gayville-Volin School District 63-1, File No. SLD-471545, CC Docket No. 02-6, Order, DA 06-1655 (Wireline Comp. Bur. rel. August 18, 2006)*

In *Gayville-Volin*, the Commission ruled that where an applicant submits an agreement (contract) not accompanied with a contract date on the signature lines of the District and its service provider, but has a legally binding agreement in place when it submits its FCC

Form 471, the District is not in violation of section 54.504 (c) of the Commission's rules. SLD, in its decision, fails to state any reason or provide any analysis as to why the contracts furnished by Sunnyside are not valid. Sunnyside has had the contracts reviewed by counsel who has opined that the contracts are valid under Arizona law. This is consistent with the *Gayville-Volin* decision.

Even if Sunnyside had a technical defect in its contracts, which it did not, the Commission can waive strict enforcement of section 54.5049 (c) as it did in *Richmond County School District, File Nos. SLD-451211, 452514, 464649, CC Docket No. 02-06, Order, DA 06-1265 (Wireless Comp. Bur. rel. June 13, 2006) & Cincinnati City School District, File No. SLD-376499, CC Docket No. 02-6, Order, DA 06-1107 (Wireless Comp. Bur. rel. May 26, 2006)*. There is no reason whatsoever put forth by SLD as to why Sunnyside should be denied E-Rate funding in light of the factual showing and the Commission's rulings in *Gayville-Volin, Richmond County School District, and Cincinnati City School District*, cited above.

#### CONCLUSION AND REQUESTED RELIEF

Accordingly, based on the Commission's holding in *Gayville-Volin, Richmond County School District, and Cincinnati City School District*, and for the reasons set forth above, Sunnyside requests that the Commission remand this matter to the SLD with instructions to fund all of the FRNs at issue in this case, namely FRNs 1275262, 1275297, 1275333, 1275822, and 1275866.

Respectfully submitted,

On behalf of Sunnyside School District 12

By:   
Dr. John Cox

Dr. John Cox  
Sunnyside Unified School District No. 12  
2238 East Ginter Road  
Tucson, AZ 85706  
520-545-2011

January 12, 2007

## **ATTACHMENT A**

### **SLD Denial Letter**



**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2005-2006**

November 21, 2006

Dr. John Cox  
Sunnyside Unified School District 12  
2238 East Ginter Road  
Tucson, AZ 85706

Re: Applicant Name: SUNNYSIDE UNIF SCHOOL DIST 12  
Billed Entity Number: 143127  
Form 471 Application Number: 462726  
Funding Request Number(s): 1275212, 1275262, 1275297, 1275333, 1275822,  
1275866, 1275899  
Your Correspondence Received: July 05, 2006

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1275212, 1275262, 1275297, 1275333, 1275822,  
1275866, 1275899

Decision on Appeal: **Denied**

Explanation:

- Upon thorough review of the appeal letter and relevant documents, USAC has determined that you have not demonstrated that had a signed contract in place with your service provider at the time you submitted your Form 471 application. During the application review, you were asked to provide copies of signed and dated contracts. In the response provided to the USAC on August 4, 2005, the contracts provided contain signatures, but the signatures are not dated. The body of the award letter/contract also does not include any statement about the effective date or an agreement date of the contract. There is no indication in the document as to what date the agreement was entered into. FCC Rules state that a contract must be signed and dated on or after the Allowable Contract Date as calculated by

the Form 470 posting date, but prior to the submission of the Form 471. In this case, you have not demonstrated that you have complied with FCC Rules. Therefore, the appeal is denied.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed and dated contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC rules further require that "both beneficiaries and service providers must retain executed contracts, signed and dated by both parties". See Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, *Fifth Report and Order and Order*, 19 FCC Rcd 15821-22, 30, FCC 04-190, ¶ 48 (rel. Aug. 13, 2004). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested. See *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003). The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services. See *Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2003) at page 20.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company



**ATTACHMENT B**

**October 26, 2004**

**Sunnyside Governing Board  
Approval Designating  
Dr. Cox District E-Rate Agent**

**SUNNYSIDE UNIFIED SCHOOL DISTRICT NO. 12**

2238 East Ginter Road  
Tucson, Arizona 85706

OCT 27 '04 PM 3:42

**BOARD AGENDA ITEM**

MEETING OF October 26, 2004 BOARD AGENDA NO. Consent Agenda Item 3)(n)(3)

TITLE OF AGENDA ITEM Authorization to Prepare and Submit Funding Year 2005-2006 E-Rate Application

INFORMATION \_\_\_\_\_ ACTION X INFO/ACTION \_\_\_\_\_

PREVIOUS ACTION OF AGENDA ITEM: Authorization Provided for Previous 7 Funding Year Applications

SUBMITTED BY: Dr. John Cox, Ph.D., Assistant Superintendent, Educational Services

**DESCRIPTION/JUSTIFICATION:**

Respectfully request Governing Board approval to submit the District's eighth E-rate application for reimbursement from the Universal Service Fund for District expenditures for telecommunications, Internet access, and internal connections for voice, data, and video transmissions. In approving this request, the Governing Board is expressly granting full authority for Dr. John Cox to act as the District's agent in this matter. This authority includes:

- Preparing an E-rate application that supports the needs to be met in the District's Technology Plan
- Preparing and submitting the Form 470 application
- Preparing all required competitive bid documents for services and/or products to be bid
- Selecting successful bidders on the basis of the most cost-effective bid for the District
- Entering into contract to award bids to successful bidders, subject to E-rate approval and issuance of District purchase order
- Preparing and submitting the Form 471 application based on the contracts awarded and to be submitted for funding by the E-rate program
- Entering into correspondence with the E-rate funding agencies regarding all matters pertaining to the application process
- Submitting the necessary Forms 486, 500, 472, and other required forms for administering the program
- Revising, responding to, answering, and complying with all other matters regarding the E-rate program

**POLICY CONSIDERATIONS:**

**LEGAL CONSIDERATIONS:**

**BUDGET INFORMATION:** M&O Budget and designated E-rate account

REVIEWED BY Dr. Raúl Bejarano, Superintendent RB

**SUPERINTENDENT'S RECOMMENDATION:**

Recommend approval.

**DOCUMENTS ATTACHED:** None

APPROVED APPROVED BY: BOARD OF EDUCATION DATE 10/26/04 NOT APPROVED \_\_\_\_\_

CC: ENCINAS  
KMAK  
COX

## **ATTACHMENT C**

**Sunnyside Governing Board February 8, 2005  
Bid Awards Referenced by FRN**

**SUNNYSIDE UNIFIED SCHOOL DISTRICT NO. 12**

2238 East Ginter Road  
Tucson, Arizona 85706

**BOARD AGENDA ITEM**

MEETING OF February 8, 2005 BOARD AGENDA NO. Consent Agenda Item 3)(n)(4)

TITLE OF AGENDA ITEM Approval of Contract Bid Awards for 2005-2006 E-Rate Funding

INFORMATION \_\_\_\_\_ ACTION X INFO/ACTION \_\_\_\_\_

PREVIOUS ACTION OF AGENDA ITEM None

SUBMITTED BY: Dr. John Cox, Ph.D., Asst. Superintendent

**DESCRIPTION/JUSTIFICATION:**

Governing Board approval is requested for the referenced contract bid awards and for the inclusion of these approved amounts in the 2005-2006 school year respective budgets. These contract awards will be the basis for the E-rate funding requests made for the 2005-2006 school year.

Per previous Board approval of October 26, 2004 E-rate application agenda Item (See Attachment), Dr. Cox will proceed to contract with the approved vendors for services and products bid and to complete the Erate application filing process by February 18, 2005.

CC: COX

**POLICY CONSIDERATIONS:**

**LEGAL CONSIDERATIONS:**

**BUDGET INFORMATION:**

REVIEWED BY Dr. Raúl Bejarano, Superintendent

**SUPERINTENDENT'S RECOMMENDATION:**

Recommend approval.

**DOCUMENTS ATTACHED:** Listing of Contract Bid Awards & October 26, 2004 Erate Agenda Item

APPROVED BY:  
APPROVED BOARD OF EDUCATION DATE 2/8/05 NOT APPROVED \_\_\_\_\_

**Recommended Contract Awards to be Approved for the 2005-2006 Erate Funding Year.**

**Contract award for Bid B-05-250 is awarded to Mountain Telecommunications Inc. for providing single telephone lines (POTS) to each of the district schools and administration building for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$13,948.35 (\$1162.36 per month including taxes and fees at 25% of cost). This is a multi-year contract, renewable yearly for a maximum of five years.**

**Contract award for Bid B-05-250 is awarded to Time Warner Telecom for providing 15Mbps Internet Access Services to district's schools through the network data hub located at the administration building for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$19,202.40 (\$1600.20 Note: no taxes are accessed internet access services) This is a multi-year contract, renewable yearly for a maximum of five years.**

**Contract award for Bid B-05-250 is awarded to Time Warner Telecom for providing Point to Point T1's or equivalent for voice, data, and video transmission to and from each of the district's schools from the network hub located at the administration building for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$203,874.14 (\$16,989.51 per month including taxes and fees at 25% of cost) This is a multi-year contract, renewable yearly for a maximum of five years.**

**Contract award for Bid B-05-250 is awarded to Xspedius Communications for providing PRI's and DID numbers for the district's phone service from the district's central switch located at the administration building to Xspedius communication facilities for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$39,375 (\$3,281.25 per month including taxes and fees at 25% of cost) This is a multi-year contract, renewable yearly for a maximum of five years.**

**Contract renewal award for Bid B-02-193 is awarded to Xspedius Communications for providing Long Distance Services from the district's central phone switch located at the administration building through Xspedius communication facilities for the period beginning July 1, 2005-June 30, 2006. Per minute long distance service is \$0.039 per minute. Yearly cost is estimated at \$10,740 (\$895 per month including taxes and fees at 25% of cost). This contract is a multi-year contract, renewable yearly for a maximum of five years. This is the last year a contract can be awarded under this contract.**

**Contract renewal award for Bid B-02-190 is awarded to Verizon Wireless Communications to provide cell phone service for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$90,000 (\$7500 per month including taxes and fees at 25% of cost). This contract is a multi-year contract, renewable**

yearly for a maximum of five years. This is the last year a contract can be awarded under this contract.

Contract renewal award for Bid B-04-235 is awarded to Design Business Communications dba American Telephone to provide telephone switch and line maintenance for the period beginning July 1, 2005-June 30, 2006. The funding for this award is based on approval of Erate funding. Currently, Erate funding has not been approved for the 2004-05 awarded contract. Yearly cost is estimated at \$88,000. This contract is a multi-year contract, renewable yearly for a maximum of five years. This is the second year for contract award under this bid.

Contract renewal award for Bid B-04-238 is awarded to Netsian Technologies Group to provide upgrades to the telephone switches and voice mail system for the period beginning July 1, 2005-June 30, 2006. The funding for this award is based on approval of Erate funding. Currently, Erate funding has not been approved for the 2004-05 awarded contract. The project cost is estimated at \$175,210.10. This contract is a multi-year contract, renewable yearly for a maximum of five years. This is the second year for contract award under this bid.

Contract renewal award for State Contract AD020193-018 is awarded to Compel Corporation to provide data, voice, and video network cabling services as specified for the period beginning July 1, 2005-June 30, 2006. The funding for this award is based on approval of Erate funding. Currently, Erate funding has not been approved for the 2004-05 awarded contract. The services to be provided have been estimated to cost \$180,000. The contract is issued by the State for school districts to procure services. This contract renewal award is being made to renew the bid for an additional year.

Contract renewal award for Bid B-02-192 is awarded to Genger & Associates, LLC dba Silverado Technologies to provide data network services as specified for the period beginning July 1, 2005-June 30, 2006. The funding for this award is based on approval of Erate funding. Currently, Erate funding has not been approved for the 2004-05 awarded contract. The services to be provided have been estimated to cost \$80,000. This contract is a multi-year contract, renewable yearly for a maximum of five years. This is the second year for contract award under this bid.

Contract award for Bid B-05-261 is awarded to NVision Networking Inc., to provide the voice and data equipment specified in the bid document for the New Middle, School, Elementary School, and District Office; to install and configure all equipment specified; to train for system administration; and to provide project management beginning July 1, 2005-June 30, 2006. Project cost is \$382,763.26. This is a multi-year contract, renewable yearly for a maximum of five years.

Contract award for Bid B-05-260 is awarded to Apex Southwest investments dba Tri-Tek Electronics for the Group #1- CAT 5 Cable; Group #4- Fiber Jumpers; Group #5 - Miscellaneous Tools; and Group #5 - Miscellaneous APC UPS Model

FRN'S  
1275262  
+  
1275297

FRN  
1275333

**2200 battery to be provided beginning July 1, 2005-June 30, 2006. Estimated cost of items to be purchased under this contract for Erate application is \$6,000. This is a multi-year contract, renewable yearly for a maximum of five years.**

**Contract award for Bid B-05-260 is awarded to Grainger. Inc., for the Group #2-Ends, Power Stripes and Wiremolds to be provided beginning July 1, 2005-June 30, 2006. Estimated cost of items to be purchased under this contract for Erate application is \$6,000. This is a multi-year contract, renewable yearly for a maximum of five years.**

**Contract award for Bid B-05-260 is awarded to Batteries Plus/Maya Yang for the Group #5-Miscellaneous APC UPS Model 1400 Battery to be provided beginning July 1, 2005-June 30, 2006. Estimated cost of items to be purchased under this contract for Erate application is \$3,000. This is a multi-year contract, renewable yearly for a maximum of five years.**

**Please Note: As of this filing for the Governing Board Agenda, we are still in the process of evaluating bids for the following:**

**New Middle School Special Systems Bid  
New Elementary School Special Systems Bid  
General Cabling of District Facilities  
Maintenance of District Data Equipment and Network**

**In the Governing Board's Monday Supplement, all remaining bid recommendations and contract awards will be sent for consideration with the above awards.**

**REVISED**

3) (u) (4)

Governing Board Supplement, Monday, February 07, 2005

FRN  
1275822

Contract award for Bid B-05-264 is awarded to Black Box Network Services for providing the New Sunnyside Middle School Special Systems as specified by bid. The work is to begin July 1, 2005 and be completed by the scheduled start of the school in the fall of 2005. Cost of the project was bid at \$75,429.89. For purposes of the Erate funding application, an additional 10% is being added to cover any additional work that may be approved during the construction period.

FRN  
1275866

Contract award for Bid B-05-263 is awarded to Black Box Network Services for providing the New Sunnyside Elementary School Special Systems as specified by bid. The work is to begin after July 1, 2005 subject to the approval of the School Facilities Board (SFB). Cost of the project was bid at \$54,559.52 ~~\$75,429.89~~. For purposes of the Erate funding application, an additional 10% is being added to cover any additional work that may be approved during the construction period. ✓

Contract award for Bid B-05-261 is awarded to NVision Networking Inc., to provide Senior Level Engineering services for the data and video distribution network beginning with the award date of this contract through February 8, 2006. This is a multi-year contract, renewable yearly for a maximum of five years. At this time, no funding under the Erate program is anticipated for the period July 1, 2005 through June 30, 2006. This part of Bid B-05-261 will be considered for the 2006-2007 Erate application.

Contract award for Bid B-05-259 is awarded to Silverado Technologies to provide general cabling services as specified for the voice, data and video distribution network for required moves, adds, and changes beginning July 1, 2005-June 30, 2006. Estimated cost of services to be provided under Erate for this contract is \$80,000 for the year. This is a multi-year contract, renewable yearly for a maximum of five years.

Contract award for meeting the specifications and price under Bid B-05-260 is in addition awarded to Interstate Batteries under State Contract AD030106 to APC UPS Model 2200 Batteries beginning July 1, 2005. Estimated cost of products to be provided under Erate for this contract is \$6,000 for the year. This is a multi-year contract, renewable yearly for a maximum of five years as long as the subject State Contract is also renewed for the same yearly period.



## **ATTACHMENT D**

**Copies of Each Award Letter and Contract  
with Notarized Affidavit Referenced to FRN**

FRN 1275262

FRN 1275297

**Sunnyside Unified School District**

Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road  
Tucson, AZ 85706  
(520) 545-2011 Phone  
(520) 545-2128 Fax  
Email: [johnc@suid12.org](mailto:johnc@suid12.org)

**Award Letter and Contract**

February 8, 2005

NVision Networking Inc.  
% Lindsay Albisani  
P.O. Box 91050  
Tucson, AZ 85752-1050

Dear Ms. Albisani,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$382,763.26 in total for the voice and data equipment specified in the bid for the two (2) New Schools and District Office: (Middle School and District Office \$237,313.22; Elementary School \$145,450.04) for the next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-05-261. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and NVision Networking, Inc.. The procurement of the services described above will be dependent upon the following conditions:

For the award of the Middle School and District Office portion of contract:

1. Construction of the Middle School
2. Issuance, when applicable, of a valid purchase order for the next fiscal year

For the award of the Elementary School portion of contract:

3. Construction of the Elementary School
4. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with NVision Networking Inc. for this service and installation

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the NVision Networking, Inc. by Lindsay Albisani, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,  
% Dr. John Cox, Asst. Supt.,  
2238 E. Ginter Road, Tucson, AZ 85706

FRN 1275262  
FRN 1275297

## AFFIDAVIT

STATE OF Arizona )  
 )  
COUNTY OF Pima )

ss:

Lindsay Albisani, being first duly sworn, upon his/her oath deposes and says:

1. I was employed by NVision Networking Inc. as co-owner at the time of this contract award.
2. Prior to February 18, 2005, I executed, as authorized agent of NVision Networking Inc., the attached Award Letters and Contracts between NVision Networking Inc. and Sunnyside Unified School District for supplying and installation of voice and data equipment as specified by bid for the New Sunnyside Middle School and District Office and for supplying and installation of voice and data equipment as specified by bid for the New Sunnyside Elementary School for the fiscal year July 1, 2005 through June 30, 2006, under Sunnyside School District Procurement Bid No. B-05-261.

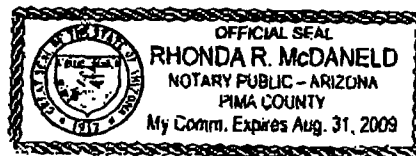
Lindsay Albisani  
Lindsay Albisani

SUBSCRIBED AND SWORN TO before me this 11 day of January, 2007

By Lindsay Albisani

Rhonda R. McDanel  
Notary Public

My commission Expires:  
31 Aug 2009



**FRN 1275333****Office of Dr. John Cox, Assistant Superintendent****Award Letter and Contract**

2238 E. Ginter Road  
Tucson, AZ 85706  
(520) 545-2011 Phone  
(520) 545-2128 Fax  
Email: [johnc@susd12.org](mailto:johnc@susd12.org)

February 8, 2005

Apex Southwest Investments  
dba Tri-Tek Electronics  
% John O'Green  
9014 N. 23<sup>rd</sup> Ave., Suite #10  
Phoenix, AZ 85021

Dear Mr. O'Green,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$6,000 of fiber jumpers, data network tools, and APS UPS Model 2200 batteries for the next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-05-05-260. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Tri-Tek Electronics. The procurement of the items described above will be dependent upon the following conditions:

1. Approval of Erate funding for the 2005-2006 school year
2. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Tri-Tek Electronics for this service.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Tri-Tek Electronics by John O'Green, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,  
% Dr. John Cox, Asst. Supt.,  
2238 E. Ginter Road,  
Tucson, AZ 85706

01/11/2007 THU 9:28 FAX

002/003

FRN1275333

## AFFIDAVIT

STATE OF Arizona )  
 )  
COUNTY OF Maricopa )

ss:

John O. Green, being first duly sworn, upon his/her oath deposes and says:

1. I was employed by Apex Southwest Investments dba Tri-Tek Electronics as authorized agent for the company for signing the enclosed contract with Sunnyside School District.
2. Prior to February 18, 2005, I executed, as authorized agent of Apex Southwest Investments dba Tri-Tek Electronics, the attached Award Letter and Contract between Tri-Tek Electronics and Sunnyside Unified School District for supplying fiber jumpers, data network tools, and UPS Model 2200 batteries for the fiscal year July 1, 2005 through June 30, 2006, under Sunnyside School District Procurement Bid No. B-05-05-260.

John O. Green  
John O. Green

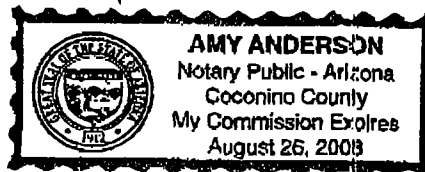
SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of January, 2007

By John O. Green

Amy Anderson  
Notary Public

My commission Expires:

Aug 26, 2008



**FRN 1275822**  
**FRN 1275866**

February 15, 2005

Dr. John Cox  
Sunnyside Unified School District  
2238 East Ginter Rd.  
Tucson, AZ 85706

RE: District Procurement Bids B-05-05-264 and B-05-05-263

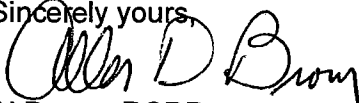
Dear Dr. Cox,

We were delighted to receive your Award Letter and Contract notifications for the Sunnyside Middle School (B-05-05-264) and Sunnyside Elementary School (B05-05-263). Thank you for selecting Black Box Network Services to provide the professional telecommunications infrastructure services to Sunnyside Unified School District that our current customers have experienced since 1976. Enclosed are signed copies of the notifications as you requested.

At the appropriate time, a project manager will be assigned to your projects. The project manager will be responsible for maintaining the project schedule, project implementation, assigning resources, procurement and delivery of materials, and quality control. As an RCDD ([www.bicsi.org](http://www.bicsi.org)), I will be monitoring the project implementation and quality control as required.

Please contact me directly if you have any questions or concerns. We look forward to working with the Sunnyside Unified School District on these important projects.

Sincerely yours,



Al Brown, RCDD  
Account Manager  
602-470-8600 x234  
[abrown@az.blackbox.com](mailto:abrown@az.blackbox.com)

**FRN 1275822****Office of Dr. John Cox, Assistant Superintendent**

2238 E. Ginter Road  
Tucson, AZ 85706  
(520) 545-2011 Phone  
(520) 545-2128 Fax  
Email: [lohnc@susd12.org](mailto:lohnc@susd12.org)

**Award Letter and Contract**

February 8, 2005

Black Box Network Services

1305 W. 1<sup>st</sup> Street  
Tempe, AZ 85281

Dear Mr.,

This letter is to confirm the District's decision to accept your bid and to purchase an \$75,429.89 of Special Systems as specified in the bid for the New Sunnyside Middle School to be installed beginning with the next fiscal year 07/01/2005 and to be completed by the scheduled start of the school in the fall of 2005 under the terms of the Sunnyside School District Procurement Bid No. B-05-05-264. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Black Box Network Services. An additional 10 % (\$7,543) is being provided for contingency and to be included in the Erate application to cover any change orders or additions requested by the District during construction. The procurement of the services described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Black Box Networking Services.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Black Box Networking Services by RLC, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,  
% Dr. John Cox, Asst. Supt.,  
2238 E. Ginter Road,  
Tucson, AZ 85706

01/11/2007 THU 9:24 FAX

002/002

FRN 1275822

## AFFIDAVIT

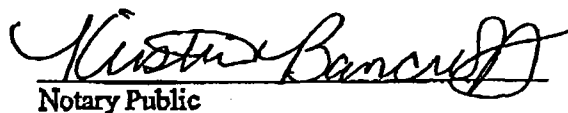
STATE OF Arizona )

)

ss:

COUNTY OF Maricopa )Richard Clark, being first duly sworn, upon his/her oath deposes and says:

1. I am employed by Black Box Network Services as Branch Manager.
2. Prior to February 18, 2005, I executed, as authorized agent of Black Box Network Services, the attached Award Letter and Contracts between Black Box Network Services and Sunnyside Unified School District for Special Systems as specified by bid for the New Sunnyside Middle School for the fiscal year July 1, 2005 through June 30, 2006, under Sunnyside School District Procurement Bid No. B-05-05-264.

Richard ClarkSUBSCRIBED AND SWORN TO before me this 11 day of January, 2007By Richard Clark  
Notary Public

My commission Expires:

04/30/08



**FRN 1275866****Office of Dr. John Cox, Assistant Superintendent**

2238 E. Ginter Road  
Tucson, AZ 85706  
(520) 545-2011 Phone  
(520) 545-2128 Fax  
Email: [johnco@susd12.org](mailto:johnco@susd12.org)

**Award Letter and Contract**

February 8, 2005

Black Box Network Services

1305 W. 1<sup>st</sup> Street  
Tempe, AZ 85281

Dear Mr.,

This letter is to confirm the District's decision to accept your bid and to purchase an \$54,559.52 of Special Systems as specified in the bid for the New Sunnyside Elementary School to be installed after July 1, 2005 subject to the approval by the School Facilities Board (SFB) to begin construction under the terms of the Sunnyside School District Procurement Bid No. B-05-05-263. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Black Box Network Services. An additional 10 % (\$5,460) is being provided for contingency and to be included in the Erate application to cover any change orders or additions requested by the District during construction. The procurement of the services described above will be dependent upon the following conditions:

1. Approval by the SFB for the school construction to begin
2. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Black Box Networking Services.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Black Box Networking Services by [Signature], authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,  
% Dr. John Cox, Asst. Supt.,  
2238 E. Ginter Road,  
Tucson, AZ 85706

**FRN 1275866**

**AFFIDAVIT**

STATE OF Arizona )  
 )  
COUNTY OF Maricopa )

ss:

Richard Clark, being first duly sworn, upon his/her oath deposes and says:

1. I am employed by Black Box Network Services as Branch Manager.
2. Prior to February 18, 2005, I executed, as authorized agent of Black Box Network Services, the attached Award Letter and Contracts between Black Box Network Services and Sunnyside Unified School District for Special Systems as specified by bid for the New Sunnyside Elementary School for the fiscal year July 1, 2005 through June 30, 2006, under Sunnyside School District Procurement Bid No. B-05-05-263.

Richard Clark

Richard Clark

SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of January, 2007

By Richard Clark



Kristin Bancroft  
Notary Public

My commission Expires:

4/30/08

## **ATTACHMENT E**

**12/7/2005 - SLD Contract Guidance**

Graphics Off



# The Universal Service Administrative Company

Home

High Cost

Low Income

Rural Health Care

Schools &amp; Libraries

## Overview

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## Training & Outreach

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[WebEx Recordings](#)
[Training Presentations](#)
[Submit a Question](#)
[Site Visits](#)
[Schools & Libraries News Briefs](#)

## Applicants

[Process Flowchart](#)

## Applicants

[Eligible/Deadlines](#)
[Audits](#)

## Service Providers

[Conference Calls](#)

## Service Providers

[Invoicing](#)
[Disbursements](#)
[Audits](#)

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[Commitments Search](#)
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[Form 471 Application](#)

## Tools

[Billed Entity Search](#)
[SPIN Search](#)
[FRN Extensions](#)
[Eligible Products Database](#)

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[Apply Online](#)
[Applicant Forms](#)
[Provider Forms](#)

## Forms

## Contract Guidance

### CONTRACTS

In general, a contract is a binding agreement, enforceable by law, between two or more parties that creates an obligation to do, or not do, something. Contract definitions and requirements are set out in each state or territory by that state's or territory's contract law.

Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, an E-rate applicant must sign a contract with the service provider before signing and submitting a completed (certified) Form 471. Applicants must also comply with state contract law. Applicants must be able to demonstrate that they had a signed contract in place before or at the time they submitted their completed Form 471, section FCC 54.504c.

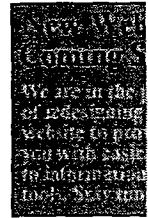
**Establishing Forms 470.** The establishing Form 470 is the Form 470 that served as the basis for the competitive bidding process. For a multi-year contract, the establishing Form 470 for that contract could have been posted in a previous funding year.

**Qualified existing contracts.** A qualified existing contract is

- a signed, written contract executed pursuant to the posting of a Form 470 in a previous funding year or
- a contract signed on or before July 10, 1997 and reported on a Form 470 in a previous year as an existing contract.

**Tariffed services provided under a contract.** A tariffed service provided under contract is a service offered under one or more tariffs but for which a contract has been signed. In all cases, funding requests for which a contract has been signed should be reported as contracted services. That is to say, the Form 471 Block 5 should feature the Contract Number in Item 15 (not a "T"), the Contract Award Date in Item 18, and the Contract Expiration Date in Item 20.

**Legally binding agreements.** We occasionally have used the phrase legally binding agreement as another term for contract. It is important for applicants and service providers to meet all FCC and state contract requirements. Verbal agreements and quotes do not meet these FCC requirements. Purchase orders may or may not meet state contract



## Apply Online

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## Search Tips

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## **ATTACHMENT F**

### **Attorney Opinion Regarding Legal Status of Contracts Under Arizona Law**

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2525 EAST BROADWAY BOULEVARD • SUITE 200 • TUCSON, ARIZONA 85716-5300  
(520) 322-5000 • (520) 322-5585 (Fax)

EVO DECONCINI (1901-1985)

JOHN R. McDONALD	DENNIS DECONCINI
RICHARD M. YETWIN	JOHN C. LACY
JOHN C. RICHARDSON	JAMES A. JUTRY
SPENCER A. SMITH	MICHAEL R. URMAN
DENISE M. BAINTON	GARY F. URMAN
WAYNE E. YEHLENG	DAVID V. SANDERSON
SHELTON L. FREEMAN	ALAN L. STEIN
ALYCE L. PENNINGTON	LISA ANNE SMITH
NATHAN B. HANNAH	ALICE W. CALLISON
NANCY J. MARCH	ALAN N. ARIAV
IRA M. SCHWARTZ	MICHAEL A. CORDIER
HEATHER K. GAINES	SHEFALI MILCZAREK-DESAI
STACY RUPPRECHT BUTLER	SARAH LYNN WRIGHT
MICHAEL E. NEUMANN	

RICHARD C. KATZ - OF COUNSEL  
SARA J. VANCE - OF COUNSEL

June 16, 2005

7310 N. 16TH STREET, SUITE 330  
PHOENIX, ARIZONA 85020  
(602) 282-0500  
FAX (602) 282-0520

19 WEST BIRCH AVENUE  
FLAGSTAFF, ARIZONA 86001  
(928) 214-0466  
FAX: (928) 214-6212

517 "C" STREET, NE  
WASHINGTON, D.C. 20002-7307  
(202) 546-6900  
FAX: (202) 543-5044

www.deconcinimcdonald.com

PLEASE REPLY TO TUCSON

ssmith@dmyl.com

Dr. John Cox  
Assistant Superintendent for Educational Services  
Sunnyside Unified School District  
2238 E. Ginter Road  
Tucson, AZ 85706

Re: SUSD Procurements/Contract Formation Issue

Dear John:

You have requested that we provide an opinion as to whether the District's procurement practices, as described below, result in the formation of a valid contract under applicable Arizona state law. In reviewing this matter, we have assumed that the procedures followed by the District are that, in each case, an invitation to bid or request for proposals is issued and furnished to all interested proposers. It is our understanding that the invitation to bid and request for proposals contain terms and conditions of the proposed procurement that are sufficient to form a binding contract, with the exception of pricing information and that upon receipt of proposals or bids from interested vendors, the District reviews the proposals or bids, as the case may be, and selects the successful vendor based upon a review of the signed proposals or bids submitted by the prospective vendors. We further understand that upon review of all submitted proposals, the District selects the successful vendor and provides the vendor with written notification of the award of the contract based upon the original invitation to bid, any relevant amendments and upon the price included in the vendor's proposal. You have asked whether a valid and enforceable contract exists under applicable Arizona law when the invitation to bid, the vendor's signed proposal and award letter are taken together.

In examining this issue, we have assumed that each individual procurement has been bid in accordance with requirements of the Arizona School District Procurement Code as set forth in the Arizona Administrative Code Rules R7-2-1001, *et seq.* We further assume that each award has been approved by the Governing Board of the District, either by delegation of appropriate procurement authority to the administration or by direct approval of an individual procurement by Board action.

Dr. John Cox  
June 16, 2005  
Page 2

The law in Arizona with regard to the validity of a contract formed by the documentation utilized by the District in its procurements changed on May 25, 2005, as a result of an Arizona Supreme Court decision in a case entitled *Ry-Tan Construction, Inc. v. Washington Elementary School District No. 6*, \_\_\_ P.3d \_\_\_, 2005, WL 1231929 (May 25, 2005). However, "contracts are made with reference to existing law and cannot be impaired by it . . . even if the law has been given a changed construction by the state court." *State of Washington v. Maricopa County, Arizona*, 152 F.2d 556, 559 (C.A.9 1946). For this reason, I will address the formation of contracts with respect to procurements awarded prior to May 25, 2005, separate from those procurements which are awarded after May 25, 2005.

With respect to procurements awarded prior to the *Ry-Tan* decision, the Arizona courts had held that "a contract may be formed even if not formally executed, if the parties clearly intended to bind themselves to the terms." *AROK Construction v. Indian Construction Services*, 174 Ariz. 291, 297, 848 P.2d 870, 876 (App. 1993). In a case involving the City of Phoenix and a developer, the Arizona Court of Appeals, Division One, recognized that the court would need to look at surrounding circumstances and conduct of the parties to determine the parties' intent if a formally executed contract was not in existence. *Johnson International, Inc. v. City of Phoenix*, 192 Ariz. 466, 967 P.2d 607 (App. Div. 1 1998). Both the *AROK* case and the *Johnson* case recognize that the Arizona courts have followed Section 27 of the *Restatement (Second) of Contracts*, which provides, in part, as follows:

Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; that the circumstances may show the agreements are preliminary negotiations.

Thus, so long as the parties manifest an intention to be bound and all material terms of the intended contract are present in the documents which are intended by the parties to form the contract, a valid contract will exist under Arizona law.

Therefore, in reviewing the District's pre-May 25, 2005, procurements, so long as each invitation to bid or request for proposals contained relevant terms and conditions with respect to payment, quantity and materials, and so long as the bid or proposal submitted and signed by the vendor provided the missing pricing terms, the offer contained in the signed bid or proposal of the vendor, when accepted by the issuance of the award letter signed by the District, were adequate to form a contract between the parties.

With respect to procurements entered into after May 25, 2005, the Supreme Court case of *Ry-Tan Construction, Inc., v. Washington Elementary School District No. 6*, *supra*, is controlling. In *Ry-Tan*, the invitation to bid contemplated entering into a formal construction contract to be signed by both parties. The low bidder had been awarded a contract by a vote of the majority of the governing board, and a notice to proceed had been issued by the

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

Dr. John Cox  
June 16, 2005  
Page 3

administration. The governing board, however, later revoked the award and a formal contract was never executed. In these circumstances, the Court held that no contract had been formed. Based on this decision, it is our recommendation that for all procurements occurring after May 25, 2005, a formal contract be entered into which is comprised of a single document signed by both parties. Note that prior to the Arizona Supreme Court's decision in *Ry-Tan* described above, the Arizona Court of Appeals had ruled that the governing board's award in *Ry-Tan* did create contractual obligations, consistent with our opinion as to the state of the law prior to May 25, 2005. See, *Ry-Tan Construction, Inc. v. Washington Elementary School District No. 6*, 208 Ariz. 379, 93 P.3d 1095 (App. Div. 1 2004).

If a particular invitation to bid or request for proposal does not contemplate execution of a separate, formal contract, it can be argued that the 2005 *Ry-Tan* decision would not bar formation of a contract under the circumstances of the District's practices. However, for procurements for which an award has not been made as of May 25, 2005, it is our recommendation that a contract containing all of the material terms and conditions of the invitation to bid or request for proposals be prepared and signed by both parties in order to ensure that the District has complied with the requirements of current state law as set forth in the *Ry-Tan* case. In addition, as noted above, except as set forth below, the procurements must be in compliance with the requirements of the rules contained in the Arizona Administrative Code, R7-2-1001, *et seq.* In the case of construction procurements for CM-at-risk, design-build or job order contracting, for which rules have not yet been promulgated, those procurements must be conducted in compliance with the provisions of A.R.S. §§ 41-2577 and 41-2578.

Do not hesitate to contact me if you have any questions regarding this opinion.

Very truly yours,



Spencer A. Smith

rl